

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FATEMEH KHALILY, individually and ) Case No. 11-759 SC  
on behalf of all others similarly )  
situated, ) ORDER GRANTING DEFENDANTS'  
                                        ) MOTION TO DISMISS  
Plaintiff, )  
                                        )  
                                        )  
v. )  
                                        )  
                                        )  
COMERICA BANK, a Texas )  
corporation; COMERICA )  
INCORPORATED, a Delaware )  
corporation; COMERICA MANAGEMENT )  
COMPANY, INC., a Michigan )  
corporation; and DOES 1 through )  
10, inclusive, )  
                                        )  
                                        )  
Defendants. )  
                                        )

## **I. INTRODUCTION**

19 Plaintiff Fatemeh Khalili ("Plaintiff") commenced this  
20 putative collective action, alleging violation of the Fair Labor  
21 Standards Act ("FLSA") by Defendants Comerica Bank, Comerica  
22 Incorporated, and Comerica Management Company, Inc. (collectively,  
23 "Defendants"). ECF No. 1 ("Compl."). Now Defendants move to  
24 dismiss Plaintiff's Complaint for failure to state a claim, or, in  
25 the alternative, for a more definitive statement. ECF No. 6  
26 ("Mot."). Plaintiff filed an Opposition, and Defendants filed a  
27 Reply. ECF Nos. 10 ("Opp'n"), 12 ("Reply"). For the following  
28 reasons, the Court GRANTS Defendants' Motion.

1       **II. BACKGROUND**

2           As it must on a Federal Rule of Civil Procedure 12(b)(6)  
3 motion, the Court assumes the truth of the well-pleaded facts in  
4 Plaintiff's Complaint. However, because Plaintiff pleads very few  
5 facts in her Complaint, this section is brief. Plaintiff alleges  
6 that Comerica Management Company is a subsidiary of Comerica Bank,  
7 and that Comerica Bank is a subsidiary of Comerica Incorporated.  
8 Compl. ¶ 7. Plaintiff is a California resident who was employed by  
9 Defendants<sup>1</sup> as a "Personal Banker" in Defendants' Los Altos,  
10 California banking center location from November 2005 until June  
11 2008. Id. ¶¶ 3, 22. Plaintiff describes this position as a "non-  
12 exempt banking center position." Id. Plaintiff claims that  
13 although she "consistently worked in excess of forty hours in a  
14 workweek," Defendants failed to pay "proper overtime compensation."  
15 Id. ¶ 32. Plaintiff alleges Defendants had a "single, uniform  
16 policy or practice to deny overtime compensation." Id.

17           Plaintiff's Complaint recites two claims: failure to pay both  
18 overtime and minimum wages under the FLSA. 29 U.S.C. §§ 207, 206.  
19 Pursuant to 29 U.S.C. § 216(b), Plaintiff claims to represent a  
20 class of "[a]ll current and former non-exempt banking center  
21 employees who worked for Defendants within the three years prior to  
22 the filing of this complaint and chose to opt-in to this action."  
23 Id. ¶ 15.

24           ///

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26           

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<sup>1</sup> In alleging the facts underlying her claims, Plaintiff  
27 exclusively refers to the three Defendants collectively as  
28 "Defendants." Plaintiff suggests that this is justified because  
all three allegedly share a human resources department, as well as  
"information systems, technology, legal department and treasury."  
Id. ¶¶ 7-8.

1     **III. LEGAL STANDARD**

2                 A motion to dismiss under Federal Rule of Civil Procedure  
3     12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
4     Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based  
5     on the lack of a cognizable legal theory or the absence of  
6     sufficient facts alleged under a cognizable legal theory.  
7     Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
8     1990). "When there are well-pleaded factual allegations, a court  
9     should assume their veracity and then determine whether they  
10    plausibly give rise to an entitlement to relief." Ashcroft v.  
11    Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a  
12    court must accept as true all of the allegations contained in a  
13    complaint is inapplicable to legal conclusions. Threadbare  
14    recitals of the elements of a cause of action, supported by mere  
15    conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1950  
16    (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The  
17    allegations made in a complaint must be both "sufficiently detailed  
18    to give fair notice to the opposing party of the nature of the  
19    claim so that the party may effectively defend against it" and  
20    sufficiently plausible such that "it is not unfair to require the  
21    opposing party to be subjected to the expense of discovery." Starr  
22    v. Baca, 633 F.3d 1191, 1204 (9th Cir. 2011).

23  
24     **IV. DISCUSSION**

25                 Defendants seek dismissal of Plaintiff's Complaint on the  
26     basis that it fails to state a claim with the specificity required  
27     by Iqbal and Twombly. Defendants argue: "Plaintiff has failed to  
28     allow the Court to reasonably conclude that the allegations are

1 more than a sheer possibility." Mot. at 1. Defendants argue that  
2 the "facts" Plaintiff pleads "are merely legal conclusions couched  
3 as facts," and that the Complaint is "devoid of specific  
4 calculations, estimates or examples of Defendants' purported  
5 failure to pay overtime or minimum wages or any other information  
6 that would allow Defendants to understand the basis for Plaintiff's  
7 class allegations or make their own calculations." Id. at 4.

8 Plaintiff responds that her Complaint satisfies Iqbal and  
9 Twombly. See Opp'n. She argues that Iqbal's plausibility standard  
10 is "context-specific," and that in the context of an FLSA claim,  
11 "[s]tating a plausible claim for relief . . . means little more  
12 than pleading that Defendants' employment policy is contrary to a  
13 statutory mandate, and Plaintiff and the class members were subject  
14 to those policies." Id. at 5. In support of this argument,  
15 Plaintiff cites to a pre-Iqbal order issued by this Court,  
16 Velasquez v. HSBC Financial Corp., No. 1:08-cv-1285, 2009 U.S.  
17 Dist. LEXIS 5428, at \*13 (N.D. Cal. Jan. 16, 2009). Opp'n at 1.  
18 Plaintiff argues that requiring "specific factual details about  
19 each and every [FLSA] violation is impractical and unrealistic," in  
20 part because "Defendants, not Plaintiffs, are in possession of the  
21 class's employment records chronicling Defendants' history of  
22 violations." Id. at 7-8.

23 The Court begins its discussion by noting that the Ninth  
24 Circuit has recently opined on the policy rationale underlying the  
25 Iqbal and Twombly opinions: a complaint must include enough detail  
26 to provide a defendant with fair notice of the nature of the claim  
27 so it may effectively defend against it. Starr, 633 F.3d at 1204.  
28 It must also be sufficiently plausible as to justify subjecting the

1 defendant to the expense of discovery. Id.

2 The Court finds Plaintiff's Complaint serves neither policy  
3 consideration. Plaintiff alleges that through an unidentified  
4 "policy or practice," Defendants have failed to pay "the proper  
5 overtime compensation" to Plaintiff and all non-exempt "banking  
6 center employees." The "facts" Plaintiff pleads in support of this  
7 allegation are almost entirely legal conclusions couched as facts.  
8 The actual facts pleaded can be counted on one hand: Plaintiff  
9 worked for Defendants, her title was "personal banker," and she  
10 worked for more than forty hours per week. Every other alleged  
11 "fact" is a legal conclusion: Plaintiff alleges Defendants failed  
12 to pay "proper" overtime, without alleging what made Defendants'  
13 actions "improper." She alleges that Defendants' failure to pay  
14 overtime "was and is a result of a single, uniform policy or  
15 practice" without identifying, or even suggesting, what this policy  
16 or practice was or how it was promulgated.

17 The actual facts pleaded do not provide Defendants with fair  
18 notice of the nature of Plaintiff's claims. It is unclear, for  
19 example, whether Plaintiff's claim is premised on exempt/non-exempt  
20 miscategorization, failure to properly calculate the overtime rate,  
21 or a failure to account for hours worked "off-the-clock." Because  
22 the Complaint is so broad and vague, Defendants cannot raise a  
23 meaningful defense to the action going forward. For example, the  
24 FLSA provides a two-year statute of limitations for claims of  
25 unpaid minimum wages or overtime; if such conduct was willful, the  
26 statute of limitations is three years. 29 U.S.C. § 255(a). Thus,  
27 to state a claim upon which relief could be granted, Plaintiff must  
28 allege plausible facts supporting a claim that Defendants violated

1 FLSA at some point after February 18, 2008 (three years before the  
2 filing of this action), and that Defendants' violation was willful.  
3 Due to the vagueness of the Complaint, Defendants cannot raise such  
4 a challenge.

5 Nor do the facts pleaded justify subjecting Defendants to  
6 discovery. Discovery is costly, time-consuming, and invasive, and  
7 before a plaintiff can compel a defendant to open its books and sit  
8 for depositions, it must justify this imposition by stating a  
9 plausible claim for relief. See Starr, 633 F.3d at 1204. Here,  
10 Plaintiff makes a bald allegation that Defendants failed to pay her  
11 overtime, and seeks to represent a class of all banking center  
12 employees Defendants employed during the relevant period. In so  
13 doing, Plaintiff essentially states, "Defendants wrongly harmed  
14 me," without explaining the nature of that alleged harm. This is  
15 insufficient.

16 Plaintiff argues that requiring "specific factual details  
17 about each and every [FLSA] violation is impractical and  
18 unrealistic," in part because "Defendants, not Plaintiffs, are in  
19 possession of the class's employment records chronicling  
20 Defendants' history of violations." Opp'n at 7-8. The Court finds  
21 this argument to be unavailing. Plaintiff need not recite "every  
22 violation" to survive a Rule 12(b)(6) motion -- she merely must  
23 provide a factual narrative that provides Defendants with notice of  
24 her claims and a plausible factual underpinning of those claims.  
25 There are many ways Plaintiff could do this without first acquiring  
26 Defendants' employment records, such as by providing more detail  
27 about the "policy or practice" Defendants allegedly implemented in  
28 violation of FLSA, how this policy or practice caused Plaintiff to

1 be underpaid for overtime work, and why Plaintiff believes other  
2 similarly situated individuals have been underpaid.

3 For these reasons, the Court finds Plaintiff's Complaint to  
4 fall far below the relevant pleading standard. It therefore GRANTS  
5 Defendants' Motion to Dismiss. Because it is possible Plaintiff  
6 may cure the deficiencies in her Complaint through amendment, the  
7 Court DISMISSES Plaintiff's Complaint WITH LEAVE TO AMEND.

8

9 **V. CONCLUSION**

10 For the foregoing reasons, the Motion to Dismiss filed by  
11 Defendants Comerica Bank, Comerica Incorporated, and Comerica  
12 Management Company, Inc. is GRANTED; Plaintiff Fatemeh Khalili's  
13 Complaint is DISMISSED WITHOUT PREJUDICE. Plaintiff is granted  
14 thirty (30) days to file an amended complaint; if Plaintiff fails  
15 to amend her complaint within this period, the Court will dismiss  
16 this action WITH PREJUDICE.

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18 IT IS SO ORDERED.

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20 Dated: June 16, 2011

  
21 UNITED STATES DISTRICT JUDGE

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